

## **Q&A: How are Students with Disabilities Evaluated in Public Elementary and Secondary Schools?**

### **What laws regulate evaluation and placement of students into special education?**

Section 504 of the Rehabilitation Act (Section 504) governs evaluation and placement of students and determines which students may receive a Section 504 plan.<sup>1</sup> The Individuals with Disabilities Education Act (IDEA) also governs evaluation and placement of students and determines which students are eligible for individualized education programs (IEPs).

### **When must schools<sup>2</sup> conduct an initial evaluation of a student?**

Under Section 504, a school **must** evaluate any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student in regular or special education.

Under the IDEA, schools have an **affirmative obligation** to identify, locate, and evaluate all children with disabilities. This is known as the “child find” obligation. Because of this obligation, the school should be evaluating students that are potentially IDEA-eligible. However, parents may also request that their child be evaluated. If the school agrees that evaluation is needed, the child will be evaluated at no cost to the parents.

Under both the IDEA and Section 504, schools must make decisions on an individualized basis, not based on:

- Presumptions or stereotypes regarding persons with disabilities or classes or such persons; or
- Concerns about the costs of providing the related aids or services.

### **What happens if a parent does not want their student to be evaluated?**

Under the IDEA, the parent must first give their informed, written permission for evaluation. To be informed about the matter, the parent should receive prior written notice before being asked for permission. Prior written notice must include:

- Why the school wants to conduct the evaluation (or why it refuses to do so);
- A description of each evaluation procedure, assessment, record, or report used as a basis for proposing the evaluation (or refusing to conduct the evaluation);
- Where parents can go to obtain help in understanding IDEA’s provisions;
- What other options the school considered and why those were rejected; and
- A description of any other factors that are relevant to the school’s proposal (or refusal) to evaluate the child.

While Section 504 does not specify whether parental consent is needed to conduct an evaluation, the U.S. Department of Education’s Office for Civil Rights has issued guidance that a school does need parental consent prior to conducting an evaluation. A parent may refuse to consent to an evaluation, but if consent is refused, the school is not liable for a child find violation.

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<sup>1</sup> Note that Section 504 protections apply to students if they qualify as having a disability regardless of whether or not they have a Section 504 plan. Please see [Q&A - Eligibility](#) for additional information.

<sup>2</sup> In this document, “school” is a term used to include public K-12 schools, including charter schools.

Under both Section 504 and the IDEA, if a parent refuses to consent to an evaluation, a school may (but is not required to) pursue due process procedures or mediation to try to evaluate the child.

### **When must the initial evaluation occur?**

A school must provide a parent with the consent form for evaluation within a reasonable amount of time. Once the parents receive the consent form, they must sign it and return it to the school. Then, initial evaluation under the IDEA **must occur within 60 calendar days of receiving parental consent** for the evaluation, or within the timeframe specified by the state. In Colorado, the timeframe is also 60 calendar days. Section 504 does not have a specific number of days, but generally follows the same timeline as the IDEA and state law.

### **When must schools reevaluate students with disabilities?**

Under Section 504, schools must reevaluate students with disabilities:

- Periodically (*i.e.*, generally, at least every three years); **and**
- Before any subsequent significant change in placement.

Under the IDEA, reevaluation **must** occur at least every three years. Additionally, a school **may** need to reevaluate a student with a disability:

- If the school determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- If the child's parents or teacher requests a reevaluation.

### **What should evaluation look like?**

**Under Section 504**, tests and other evaluation materials **must** be:

- Validated for the specific purpose for which they are used;
- Administered by trained personnel in conformance with the instructions provided by their producer;
- Tailored to assess specific areas of educational need and not merely intelligence quotient (IQ);
- Selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); and
- For students who are English Learners, presented in an appropriate language based on the student's needs and language skills.

**Under the IDEA**, an initial evaluation must be full and individual, focused on an individual child's needs and conducted only for an individual child. The evaluation must use a variety of strategies and tools to gather information about the child, including relevant functional, developmental, and academic information. A full and individual evaluation includes:

- Health
- Vision and hearing
- Social & emotional status
- General intelligence
- Academic performance
- Communicative status
- Motor abilities

If a student is being re-evaluated under the IDEA, the IEP team must review existing data, conduct observations, conduct evaluations, and obtain parental input. Based upon the existing data, the team must identify what additional information is necessary to determine:

- Whether the child continues to have such a disability and the educational needs of the child;
- The present levels of academic achievement and related developmental needs of the child;
- Whether the child continues to need special education and related services; and
- Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

### **How are evaluations interpreted and placement decisions made?**

Under Section 504, in interpreting evaluation data and making placement decisions, schools **must**:

- Draw upon information from a variety of sources, such as aptitude and achievement tests, teacher recommendations, the student's physical condition, the student's social or cultural background, and the student's adaptive behavior;
- Establish procedures to ensure that information obtained from all such sources is documented and carefully considered; and
- Ensure that placement decisions are made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and placement options.

Under the IDEA, placement decisions must be made by an **IEP team, which must include**:

- The parents of the child with a disability;
- At least one regular education teacher of the child;
- At least one special education teacher (or at least one special education provider of the child);
- A qualified, knowledgeable representative of the school; and
- The child with a disability, as appropriate.

### **What can I do if my school is not following the proper evaluation and placement procedures?**

If you need help or have questions about your rights, you can contact [Disability Law Colorado](#). You also may have the right under IDEA to obtain an [Independent Educational Evaluation](#), which is an evaluation conducted by a qualified examiner not employed by the school.

For Section 504 violations, you have a right to file a complaint with the [U.S. Department of Education's Office for Civil Rights](#) (within 180 days of the alleged discrimination) or the [U.S. Department of Justice](#). For IDEA violations, you can pursue dispute resolution through the [Colorado Department of Education](#) (CDE). A state complaint must be filed within 1 year of the alleged violation, and a due process complaint must be filed within 2 years of the alleged violation. Mediation is also available through CDE.

### **Where can I go for more information?**

- 34 Code of Federal Regulations Sections 104.34-37 and 300.300-328
- OCR's [Disability Discrimination](#) Website
- OCR's [Policy Guidance Portal](#)
- CDE's [Special Education Rules & Regulations](#)